

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3244 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? :
Yes to be circulated to Labour Court & Ind. Court

G. S. R. T.

Versus

RAMESHBHAI D. PATEL

Appearance:

MR HARDIK C RAWAL for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 8/11/2000

CAV JUDGEMENT

1. Gujarat State Road Transport Corporation
(hereinafter referred to as "Corporation")- petitioner
has filed this petition challenging the judgement and

award dated 15th October, 1991 passed by the Labour Court, Surat (hereinafter referred to as "Tribunal"). The Tribunal, by its above judgement and award, was pleased to redirect the reinstatement of Shri Rameshbhai D. Patel, workman (hereinafter referred to as "workman") within 30 days from the date of order along without back wages but to consider the workman as continuous in service.

2. Background of the matter:

Rameshbhai D. Patel was employed as a conductor by the Corporation. It has been alleged that cases Nos. 413/1982, 420/1983, 233/1984, 2/1986, 257/1989 and 257/1989 has been registered against the workman. Thus the case, it was alleged, is that the workman reissued used tickets to the passengers and collected fare from them and that has created serious loss of revenue to the Corporation. Some minor punishment was also inflicted on the workman. However, he continued in service in spite of these irregularities committed by him. It may be noted that in the year 1988 he was dismissed and also in 1989 also he was dismissed but ultimately he was taken back in service.

2.1 Present Controversy:

It has been stated in the petition that the workman was found to have collected fare without issuing tickets and also found guilty of reissuing used tickets. A regular Departmental enquiry was held against him. The Enquiry Officer found the respondent workman guilty of the charges alleged against him. A copy of the report of the Enquiry Officer is annexed at "A" to the petition. In this enquiry report also, it was alleged that the workman has reissued used tickets of less denomination, whereas he has collected fare at higher stage and thereby created serious loss of revenue to the Corporation. This enquiry report is prepared somewhere in July, 1989. Thereafter a second show cause notice was served to the workman and subsequently the petitioner Corporation dismissed the workman by order dated 20th September, 1989.

3. The workman invoked the jurisdiction of Labour Court, Surat, being Ref. (LCS) No.265/1990. Before the Labour Court the workman did not challenge the validity of the inquiry. The workman also admitted the guilt. The Labour Court, by its award dated 15th October, 1991 directed reinstatement of the workman without back wages. The award was published on 21st December, 1991 and it

became enforceable one month thereafter.

4. At the time of hearing of the petition, learned Advocate for the petitioner challenged the award of the Tribunal on the following grounds:

4:1 The award suffers from serious errors of law and facts and requires to be quashed and set aside.

4:2 The charges alleged against the workman are serious enough to entail the consequence of dismissal. The workman was found guilty of reissuing used tickets. The regular fare was 60 paise. The reissued tickets are of 50 paise denomination. It was submitted that the misconduct was a pre-planned design on the part of the workman. No sympathetic consideration should weigh with the Court in respect of a workman who is not only guilty of misappropriation of public funds but is also found guilty of reissuance of used tickets. Reissuance of used tickets is a preplanned design to cheat the Corporation. It is fraud on the Corporation. The Corporation cannot place trust in the workman. The workman was found guilty of similar such misconducts in the past. The allegations which are levelled against him in this petition are annexed as a separate annexure in this petition. Learned Advocate for the Corporation has referred to 11(A) of the Industrial Dispute Act.

4:3 The learned Counsel for the petitioner also relied upon another judgement of the Hon'ble Supreme Court in the case of U.P. State Road Transport Corporation Vs. A.K. Parul reported in (1998) 9 SCC 416, wherein para No.3 the Apex Court has observed as under. In the case before the Hon'ble Supreme Court Shri A.K. Parul, respondent was a conductor charged for taking certain passengers without ticket. An inquiry was conducted by department and he was found guilty. The Disciplinary Authority removed the respondent from the post of Conductor. He moved the High Court challenging the order of removal. The High Court, while concurring with the finding of the authority that charges levelled against the respondent were proved, however, held that the punishment awarded did not commensurate with the gravity of the charge. On the basis, the High Court set aside the punishment and directed

the reinstatement of the respondents. It further gave direction to extend all the benefits to the respondent arising out of the setting aside of the removal order. In the background of the matter in para No.3 the Apex Court has observed that:-

"This Court consistently has taken the view that while exercising judicial review the Courts shall not normally interfere with the punishment imposed by the authorities and this will be more so when the Court finds the charges were proved. The interference with the punishment on the facts of this case cannot be sustained. In State Bank of India Vs. Samarendra Kishore Endow this Court held that imposition of proper punishment is within the discretion and judgement of the Disciplinary Authority. It may be open to the Appellate Authority to interfere with it, but not to the High Court or to the Administrative Tribunal for the reasons that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 225. As noticed earlier, the High Court, having found the charges proved, is not justified interfering with the punishment imposed by the Disciplinary Authority, particularly when in this case, the respondent was once removed from service on the charge of corruption and again reinstated. On the facts, the interference by the High Court was not at all justified. Accordingly, the appeal is allowed, the order of the High Court is set aside and the writ petition filed by the respondent in the High Court stands dismissed. No order as to costs."

4:4 The learned counsel for the Corporation also relied upon the judgement of the Hon'ble Supreme Court in the case of Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd.), Etc. Vs. Secretary, Sahakari Noukarara Sangh, Etc., reported in 37/2000 AIR Supreme Court Weekly, 3439, wherein the Hon'ble Supreme Court has considered the earlier judgement and stated the law in para 6, 7 and 8 as under:-

(Para6) "Law on this point is well settled. (Re: Municipal Committee, Bahadurgarh v. Krishnan Behari, (1996) 2 SCC 714): (1996 AIR SCW 1309: AIR 1996 SC 1249:1996 Lab IC 1056). In U. P. State Road Transport Corporation v. Basudeo Chaudhary, (1997) 11 SCC 370 this Court set aside the judgement passed by the High Court in a case where a conductor serving with the U.P. State Road Transport Corporation was removed from service on the ground that alleged misconduct of the conductor was attempt to cause loss of Rs.65/- to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering @ Rs.5.35 per head and also by making entry in the waybill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corporation Ltd. v. Kala Singh, (1997) 6 SCC 159: (1997 AIR SCW 2625: AIR 1997 SC 2661: 1997 Lab IC 2649), this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting the milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in milk centres where there were less fat contents. The Court held that "in view of proof of misconduct a necessary consequence will be that Management has lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the I.D. Act to grant relief with minor penalty."

(Para7) In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent-workmen with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of service without any blemish and to some extent, there was lapse on the part of the Management.

(Para8) In case of proved misappropriation, in our view, there is no question of considering past record.

It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases."

4:5 The learned Advocate for the petitioner relied upon the judgement of Division Bench of this Court in the case of Gujarat State Road Transport Corporation Vs. Kacheraji Motiji Parmar reported in GLR 1993(1) 302, wherein the Division Bench of this Court (Coram: M/s.M.B. Shah (as he was then) and B.S. Kapadia, J.J.) in para Nos.5 and 6 has observed that:-

"Under Section 11A of the Industrial Disputes Act the Industrial Tribunal or the Labour Court is not having unguided power to set aside the justified order passed by the management. The power under Section 11A has to be exercised judicially and the Industrial Tribunal or the Labour Court can interfere with the decision of the management under Section 11A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. This Court has repeatedly held that misappropriation if held established, would be a major misconduct and normally dismissal order passed by the competent authority should not be interfered with by the Labour Court of the Industrial Court under Section 11A of the Industrial Disputes Act.

In the present case it is apparent that the Labour Court has misdirected itself and has misplaced sympathy though the workman has committed grave misconduct. He has designedly re-issued 15 used tickets. This would indicate that the workman had planned it in advance to collect the tickets from the passengers with view to re-issue the same in the next trip. Not only this, but the workman in the present case has not issued tickets to the two passengers even though he had collected the fare from them. Further, he has not issued tickets to three passengers and lastly he has

punched some tickets in such a manner so that they can be re-issued in subsequent trip. This conduct on the part of the workman establishes beyond any doubt that the act of the workman was pre-planned and well designed to misappropriate the Bus fare amount. Apart from this aspect, there was no reason for the Labour Court to ignore the fact that the workman was involved in 44 default cases and on one occasion he was removed from service. IN this view of the matter, in our view, the order passed by the Labour Court is on the face of it unreasonable and unjustified. The Labour Court ought to have held that in the facts and circumstances of the case this was not a fit case for exercise of jurisdiction under Section 11A of the Act."

4:6 The learned counsel for the petitioner also relied upon the judgment of the Division Bench of this Court in the case of MIHIR TEXTILE LTD. V/s. NARAYANSING LAYAKSING, reported in 1993 (1) GCD 137 (Guj), wherein it was submitted that the Division Bench has observed in para-(23) are as under :-

The aforesaid observations are clearly applicable to the facts of the present case inasmuch as, as discussed above, the Labour Court as well as the Industrial court have exceeded their jurisdiction and have wrongly exercised the discretion by setting aside the order of dismissal passed by the management of the petitioner-Mill and passing the order of reinstatement without backwages in favour of the respondent workman.

5. It is submitted that in case of dismissal or misconduct, the Tribunal does not act as a court of appeal and substitute its own judgement for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc. on the part of the management. It was further submitted that it was the duty of the employed workman to issue tickets of correct fare and also to collect correct fare from the passengers depending upon the nature of the journey. The duty is cast from the respondent employee in this petition. It has been stated that the respondent employee failed to perform his duty and, in fact, he has acted negligently in discharging his duties. It was submitted that the workman has not

observed his duty properly and has not performed his work entrusted by the Corporation. He was grossly negligent in performing his duty.

5.1 In view of the same, it was submitted that the Labour Court should have confirmed the findings of the Corporation and dismissing the workman from the service, particularly after considering the adverse remarks of the workman in question.

6. In my opinion, looking to the past conduct of the employee, the report of the Enquiry Officer, and the powers vested under Section 11(A) of the Industrial Disputes Act, the Tribunal has not properly exercised the jurisdiction vested under Section 11(A) of Act. In fact, the Tribunal has failed to exercise jurisdiction under Section 11(A) of the Act and was pleased to direct the reinstatement of the workman and to consider the service of the workman as continuous. In my view Tribunal has unnecessarily shown sympathy to the workman inspite of the fact that there is a clear case of misappropriation of funds of the Corporation. In my view, the order of the Tribunal is required to be quashed and set aside. The petition is, therefore, allowed. The order of the Tribunal dated 15-10-1991, giving reinstatement to the workman is bad in law and is hereby quashed and set aside. Rule is made absolute. No order as to costs.

Date: 8/11/2000 (K.M.Mehta, J.)

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